

Shane Folsom addressed the Board and reviewed the application. The applicant is seeking a building permit for a structure on Cowper Road on a lot with no road frontage. Access to the lot is by a right of way, 208' in length through the Foley property (TM# 59-2). The Fire Department through Deputy Chief Zotti has reviewed the application and the recommendations and requirements by the Fire Department are shown on the plan. The application and points required were reviewed as submitted. The plan submitted with the application was reviewed. The house site would be 930' from Cowper Road.

David Booth asked what the surface of the driveway would be.

Shane Folsom responded Deputy Zotti asked for $\frac{3}{4}$ inch crushed gravel, 4" in depth.

Mike Hodder asked how much of the property was coming out of Current Use.

Shane Folsom noted he believes it is about 4 acres.

Mike Hodder asked what the intentions for the other acreage would be.

Shane Folsom responded it would remain in Current Use be and timber harvest

Mike Hodder asked if the applicant was aware there was no public access when the property was purchased.

Corey Eastman, II noted when he purchased the property he was aware there was no public access but felt he would be able to obtain it.

Suzanne Ryan stated they are taking 4 acres out of current use but the house and lot need to have a minimum of 5 acres taken out of current use to be buildable.

Shane Folsom stated that if five acres is needed it will be.

Suzanne Ryan asked about the wetland area that crosses the driveway.

Shane Folsom responded that there is a culvert across the driveway as you enter the Eastman property from the logging road and there seems to be run-off. If there is a wetland he will apply for the necessary permits. He is not sure if it is surface runoff or wetland at this point but thinks its may be from the logging that has taken place and is surface runoff.

Suzanne Ryan noted large parcels around the applicant's parcel and asked how they and his clients parcel came to be.

Shane Folsom responded this is a non-conforming exiting lot. He does not know or how or why the lot was created without road frontage. There could have been a traveled way to the property at one time but in order to determine that you would have to research the history of the lot. The parcel is bordered by stone walls.

Suzanne Ray stated you could track those deeds to find out how it came to be. Her point this could be an old subdivision.

Shane Folsom responded the State of NH would not require a subdivision approval because it is over 5 acres. Many years ago before the town had regulations these lots were created by just sectioning them off and giving the parcel to family members. Road frontage was not needed back then.

Rob Houseman responded to the wetland issue/ swale and building permit issue. Shane Folsom is a Certified Wetland Scientist in the State of NH and prior to a building permit he or some other Wetlands Scientist will need to design a plan that demonstrates compliance with the ordinance or certify in a letter it meets the requirements. If there are any wetlands to be encroached upon he would then file for a Dredge & Fill Permit with the State of NH and Special Use Permit as triggered by the ordinance to either the Technical Review Committee or the Planning Board. Up until 1967 in the State of NH Planning Boards in did not have authority to require Planning Board approval. Prior to 1967 it could be an agreement to subdivide and record or not record in the Registry of Deeds. This lot predates Planning Board Authority. The deed history has not been reviewed and the Town's records only go back to the most recent deed.

Kathy Barnard asked if road frontage came into play before 1967.

Rob Houseman noted Wolfeboro Zoning came into play in 1939. There were frontage requirements dating back to 1953. It appears this parcel was created prior to 1939.

Suzanne Ryan asked if there were any encumbrances, conditions or provisions in the deed to the current owner.

Rob Houseman explained that Fadden/Graves transferred the property to Mr. Eastman, II and then received an easement from Mr. Foley and then transferred the property to his son.

Mike Hodder noted potential fragmentation is something the Board has to wrestle with. Has the applicant considered the concerns Mr. Doherty raised?

Mr. Folsom responded he has not seen the letter but it is stated on the plan this access is for a single family home only. There are no plans for future development.

Corey Eastman noted the Fadden to Eastman deed notes there is no further subdivision allowed.

Steve McGuire asked how the Board is supposed to interpret the Master Plan and how this effects what is planned to be done.

Shane Folsom noted this issue is addressed in the application submitted and read the section to the Board.

Suzanne Ryan asked Mr. Houseman if he has read the deed from Fadden/Graves to Eastman and is he sure that stipulation is in the deed.

Rob Houseman stated he has read the deed from Mr. Eastman, II to Mr. Eastman, III.

Suzanne Ryan stated they may not have been carried forward then it is not necessarily going to apply. Doesn't the new deed supersede the old deed?

Rob Houseman responded if there are restrictions the do not go away. This lot is not subdividable in its current configuration as it lacks road frontage. The only way this lot could be subdivided is if the owner of it acquires road frontage.

Suzanne Ryan stated they could just blow in a road in because they have a right of way.

Rob Houseman responded the right of way is separate and distinct and for one purpose and cannot be used for subdivision.

Suzanne Ryan asked if they could have the deed restriction read into the record.

Shane Folsom noted he does not have a copy of the deed with him.

David Booth noted the applicant has not seen the letter from Mr. Doherty dated November 7th and asked if the applicant could have a minute to review it.

Alan Harding opened the public hearing.

No person spoke in favor of the application.

Opposition:

Gordon Lang resident of Ossipee but co-owner of the Lang Property TM# 46-4, which connects to a property on Trask Mountain Road where they have road frontage. The back 90 acres is a logging and tree farm they picked up in 1975. This is like the Doherty property and he stands fully behind the points the Doherty Letter made. He empathizes with Mr. Eastman and feels for anyone trying to get access to a back lot but is concerned with precedence here. Allowing the application would inhibit or impede the Master Plan, in particular, how is it to be interpreted? The Eastman's knew it was a back lot at \$1,000 per acre, and the tax map indicates a back lot. It was priced accordingly. There are a number (17 parcels) of land locked lots in the area. He became aware of them when another neighbor tried to get access through their back lot through the back lot of their property and was trying to piece together various old easements and rights of way to see how he could link to a 30-40 acre parcel behind their property. He is quite concerned how any variance in this case might be applied in future cases. (Alan Harding noted this not a variance application). Planning requirements might be reinterpreted, exception by exception. As soon as you make an exception in one of these properties they will be looking at many more applications for similar parcels, that someone can buy at a discount rate and turn it into something that does not meet the Master Plan.

Alan Harding stated the person Mr. Eastman bought this parcel from agreed upon a price to sell it and had the option to do what Mr. Eastman is doing now. Why is this a discounted price? This property was bought 2 years ago so Mr. Lang's argument is he somehow generated a favorable price.

Gordon Lang responded this is a new easement done within the past 10 years. It seems the previous owner had a different purpose for the parcel. Back lots are intended for timber and if you are changing back lots from the purpose of timber to home lots you are changing the intent of what the land was there for, how it was valued in the past, how it was used in the past, for example the 90 acres they bought was from a lumber company and it has always been a timberland. He has concern about the change in use and how it may impact the area and other back lots like this.

Mike Hodder noted this is a 75 acre parcel with 5 acres out of Current Use for a house site, 70 acres +- left over, with a deed restriction of only one dwelling on the property. Is the parcel really fragmented if such a small chunk is carved out?

Gordon Lang responded they have to deal with what can be done. He is worried about the precedence and then what happens with the next back lot and the next and the next. The Master Plan was designed clearly and the goals that are established are pretty clearly stated and admirable. When the Doherty letter is read into the record it states this proposal does not fit with the Master Plan.

David Booth explained that approval or disapproval by the ZBA stands alone and in no way establishes precedence. State law does allow RSA 674.41 exceptions and almost encourages them. There is no way you can know or anyone can know the intent of the previous owner.

Rob Houseman explained what fragmented means and displayed maps of the town and the area this parcel is located in. The reference in the Doherty Letter to a map is from the natural resource chapter of the Master Plan. The map was displayed and un-fragmented and fragmented parcels were viewed. The Un-fragmented maps shows contiguous acreage that is uninterrupted by Class V or better highways, or private roads that meet the threshold for development. The map shows that most of the town falls into the category of un-fragmented land. The area of fragmentation is measured 500' from the center line of the road. There are places where there are Class VI roads where the land is not considered fragmented.

Steve McGuire stated private roads means no frontage on a town road but the town does not even have a definition for a private road.

Rob Houseman responded that most of the shorefront lots do not have frontage, only private easement access. The only difference is the size of this parcel.

Steve McGuire asked if Rob Houseman knows how many landlocked parcels Wolfeboro has.

Rob Houseman responded he did not know and has tried to run this query on the GIS System. The term landlocked does not mean no frontage on a town road. Most of the shorefront lots do not have frontage on a town road. They are private easement accesses, no different from the lot that is subject of this application except its size. The majority of them are built on. The GIS classifies Class VI roads as not having frontage for the purpose of subdivision. It takes out all private roads and Class VI roads. He will try and get the answer as to how many landlocked parcels there are, but they are significantly less than the majority, how many are built on versus how many are vacant are the better question.

Steve McGuire stated this runs to the heart of his concerns.

Suzanne Ryan stated that she disagrees with Mr. Booth as for setting precedence. Each case has individual character but we must try and be consistent in the decision making.

Alan Harding stated he disagrees with the last sentence of Mr. Doherty's letter where he states, "This is not an allowable application under the law." This is allowable under RSA 674.41.

Steve McGuire read the letter submitted from Jonathan Doherty into the record (copy attached to these minutes).

Shane Folsom rebutted the letter. The project will not fragment the property by adding one driveway and constructing a single family home. If the application were for a 14-15 lot subdivision, he would agree that it would fragment the lot.

Mike Hodder pointed out that part of the lot is already considered fragmented per the Town's map. In his opinion, taking 5 acres out of 75 acres does not create a fragmented situation.

Gordon Lang stated he cannot speak for Mr. Doherty and suggests that precedence is set by decisions made by the ZBA. The Planning Board does take their direction from the ZBA. Maybe this one will not fragment this lot but maybe the next case will. There is concern over wetlands and runoff and would trust the wetlands review would take this into consideration.

Ken Perry, North Wolfeboro property owner, local REALTOR and President of the North Wolfeboro Area Association (NWAA). The NWAA has spoken in favor of town zoning for several years. All of the buildable lots have road frontage in which their owners paid market value, \$1,000 per acre in 2010 was not market value based on North Wolfeboro Area land prices. At the time of purchase the tax card stated, back land. When the previous owner purchased it in 2004, the MLS listing stated "no road frontage, landlocked." The current right of way did not exist on paper in 2004 and was only recorded at the Carroll County Registry of Deeds 90 days before purchase of the property last year. There has been no residential use for this property and it has always been pasture or forest land. The 1860's Carroll County Map shows no building in this location. It is a prime hunting area, which becomes important this time of year. There is no hardship as the land can continue in this historical use and placing a home 900' off the road puts it 400' outside the fragmented area. The precedence would be set if approved. He agrees with Mr. Doherty's letter, the applicant does not meet the criteria for approval. If granted how will any future request to build homes on back lots be denied? There is no hardship as the owner can buy a 400' of road frontage from Mr. Foley and this would make his lot conforming. A few years back when there was approval for a Class VI road all of the Class VI Road decisions were brought forward as precedence and as reason for that case to be approved.

Kathy Barnard asked if it was ever considered to purchase the 400' of frontage from Mr. Foley and further noted the easement was recorded on October 2, 2009.

Shane Folsom stated this is for a single family home and 400' has not even been a thought. The parcel has 75 acres. With easement access.

Mike Hodder pointed out the only precedence the ZBA sets is the adherence to the standards. He urged the Board to adhere strictly to the 4 provisions under which relief can be granted.

Kathy Barnard asked if there is a copy of the deed available that states "no subdivision."

David Booth asked Ken Perry what a comparable price is for a building lot in that area.

Ken Perry stated the value is much more in the area of \$10,000, \$15,000 to \$20,000 per acre. A building lot in this part of town is assessed as having a value of \$80,000 to \$90,000.

Alan Harding closed the public hearing.

The Board deliberated on this application. The following criteria was discussed.

1. Denial would result in unnecessary hardship or practical difficulty to the owner.
2. The circumstances of the case do not require the building, structure or part thereof, to be related to the existing or proposed streets.
3. The issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based.
4. The erection of the building or issuance of the permit will not cause hardship to future purchasers.
5. The erection of the building or issuance of the permit will not cause undue financial impact on the municipality.

Alan Harding commented that fairness is the best precedence the Board can set. That is adherence to the criteria in the RSA as to what needs to be done. What has happened in the past is another issue. It may appear similar but they are not. Each one has a different name, tax map, and set of circumstances. Think about this as opposed to what may happen in the future.

David Booth does not think there is a hardship in this case as the price does not reflect a hardship.

Kathy Barnard stated there is practical difficulty and has no problems with this application criteria. If this is to be granted there should be conditions and safeguards in place and feels that the criteria has been met. Further, this would not cause fragmentation.

Steve McGuire stated he does not feel unnecessary hardship was met and the applicant did not address practical difficulty at all. The whole application is in conflict with the Master Plan and even with the 500' back from the road it is still extending fragmentation with a structure further than 500'. The wildlife will notice a dwelling there and hardship was not met because it was landlocked a parcel.

Suzanne Ryan agrees with Mr. Booth about the unnecessary hardship and practical difficulty was not addressed. The carrying out the Master Plan would be impacted and opening the land will have impact on wildlife. Given what Mr. Perry said the applicant could purchase land from the abutter Foley to meet the frontage requirements.

Kathy Barnard commented she had thought about the 400' and in her mind it would open the property up to more lots.

Alan Harding noted there is a term "counterfactual" and this describes what is going on with the discussion. That is to say if we had done this, this would have happened, it would have been better or worse, or if he had purchased this, he would not be here. The fact is the application has been submitted to the Board. There has been a confluence of opinion that this is not based on hardship. It is up to the Board to determine practical difficulty. As to the erection of the building, it does not fragment the lot and it does not distort the official map, as there is none. There is a right of way and there is no difficulty carrying out the Master Plan, as there will be one house on 75 acres where in the deed states "no subdivision" so it enhances the Master Plan. As to the hardship of future purchases, there is nothing there.

David Booth asked for instruction on the practical difficulty that Mr. Harding sees.

Alan Harding responded the applicant owns the lot, has a right of way to the lot, wants to build a home to enjoy, will not be disturbing the deer and the difficulty is not getting a permit.

Rob Houseman addressed the Board and noted Town Council has advised on this issue. What is getting lost in the discussion is the language in the RSA.

"The issuance of the permit or erection of the building would not tend to distort the official map" the Town does not have an official map. "or increase the difficulty of carrying out the master plan upon which it is based" The phrase upon which it is based is referring to

Steve McGuire stated that is pretty thin and we have a Master Plan which dictates how this town should be developed.

Rob Houseman continued and explained the statute is written for a reason.

Steve McGuire responded the statute also states he should apply for a building permit and get denied before he shows up here. We bend it here but don't bend it there.

Rob Houseman noted Town Council has advised on this issue and the fact of the matter is we can play the rubber ball game and make him file a building permit, submit the plan, and be denied.

Steve McGuire responded that what gets written in the statute sometimes gets followed and sometimes does not get filed, upon which it references the Master Plan and that is one of the crucial things this Board has to do and that it look towards the Master Plan.

Rob Houseman responded the language is plain and you can choose to interpret it any way but it refers to the official map. He takes umbrage with the implication that we are not following the statute and the enforcement of the codes...

Suzanne Ryan commented the official map has to do the laying out of the streets. We do have wetlands maps, topo maps, aerial maps, natural resource maps for the Master Plan account for something.

Rob Houseman responded they are a planning tool.

Suzanne Ryan responded when she talks about the Master Plan she is talking about the natural resources of these large tracts of land.

It was moved by Steve McGuire and seconded by Suzanne Ryan that regarding Case # 07-RSA-11 be denied in that the enforcement of RSA 674.41 minimum frontage requirement does not entail unnecessary hardship and that as it says here the erection of the building will not tend to distort the official map of which we do not have or increase the difficulty in carrying out the Master Plan, which he believes it will.

Steve McGuire and Suzanne Ryan voted in favor of the motion. Alan Harding, David Booth and Kathy Barnard voted in opposition of the motion. The motion failed.

It was moved by Kathy Barnard to grant this application for Case # 07-RSA-11 to allow for the construction of one dwelling on a lot having no road frontage but a deeded access over TM# 59-2 for TM# 59-1, with the conditions that there will be no further subdivision or any subdivision of this property, that the conditions indicated on the memo Deputy Fire Chief dated September 13, 2011 be added as a condition and that the acknowledgement

regarding the building permit on a private way be completed to reference this property and be filed the appropriate county office.

The motion was seconded by Alan Harding.

David Booth amended the motion to read, "based on the criteria being met, including practical difficulty.

Kathy Barnard seconded the amendment.

Steve McGuire stated the board should not take it upon themselves to interpret what an applicant is bringing to the Board. They did not bring up practical difficulty at all and it is a mistake on this Board to do so.

Kathy Barnard responded the Board does site visits, knows what the RSA says, and can make those decisions.

Alan Harding, Kathy Barnard and David Booth voted in favor of the motion. Suzanne Ryan and Steve McGuire voted in opposition.

The motion passed

TM# 126-25

Applicant: Brian Gleason

Public Hearing

Variance

Steve McGuire read the abutter and public notification for the record. A site visit was held at approximately 5:00 PM.

Suzanne Ryan stepped down from his hearing. Mike Hodder was seated for this hearing.

Public Hearing for a Variance under Article 175, Section 187 of the Wolfeboro Planning & Zoning Ordinance to allow for the construction of a carport 14' 10" x 28' 10" (including overhangs) to be attached to an existing garage. The carport will encroach into the front and side yard setbacks. This property is located at 23 McCarthy Anna Road.

Mr. Gleason addressed the Board and reviewed the application as submitted. The house was built in 1988 and the setbacks were changed since 1988. There is a detached garage in the front of the property as you pull in. The setbacks are currently 20', which poses a problem. He has a 10' wide driveway and a major gully on the other side. There is a 6'-8'

drop. The car port is for off season storage of a wooden board, which is a 28' with a 36' long trailer with the tongue. It would be a difficulty pulling the trailer up the incline, up a 10' driveway with an 8'6" wide trailer. There would be issues getting this to the back of the property. The carport would be attached to the detached garage. There is only one side this could be done on because the other side is built into a hill. The carport is 14' x 28' in size. The carport will be esthetically like the garage so it looks like it has been there all along. The Variance criteria was reviewed as submitted.

Alan Harding noted there is a slope to the property.

Brian Gleason noted there is a major slope but he is not sure what it is. There are other considerations such as underground electrical, rain gutter runoff to the gully, septic location and the lot being 100' wide. The dwelling is approximately 40' wide. He is looking for relief of 1' from the front setback and 7'6" from the side setback. The carport is in line with the existing garage. The carport will come 4' more towards to Route 109.

David Booth noted there are special conditions that distinguish the lot from other properties in the area.

Alan Harding opened the Public Hearing.

Mr. Gleason's builder spoke in favor of the application.

No person spoke in opposition and the public hearing was closed.

The Board discussed the application and criteria required.

It was moved by Mike Hodder to approve Case# 08-V-11 and the variance be granted.

Steve McGuire seconded the motion and offered an amendment to the motion "having met all of the criteria, the granting of this variance would not be contrary to the public interest, the spirit of the ordinance is observed, that the granting of the variance will do substantial justice and granting of the variance will not diminish values of surrounding properties, and owing to the special conditions of the property that all criteria have been met".

David Booth seconded the amendment.

All members voted in favor of the motion and amendment. The motion and amendment passed.

Consideration of Minutes

August 1, 2011

Amendments to the minutes.

Page 1

2nd paragraph from the bottom, end of third sentence removed "a"

Last paragraph first sentence change "in to if

Last sentence add "the after to"

Page 2

2nd paragraph from the bottom. Suzanne Ryan commented at that point she handed in paperwork for the Cresse case off of York Road, the town records and information she had. She sees no reference to that and does not see it attached.

Robin Kingston stated that at the end of the meeting, the paperwork was handed to her and it was requested it be attached. It was placed in the file with a note attached to Rob Houseman. Copies were made for the Board.

Suzanne Ryan stated that Robin Kingston was incorrect and that the small set of paperwork was placed on the table and she asked the Chairman if he wanted that paperwork handed in and there was no objection from the Board or the Chairman. There were two sets of paperwork and Robin Kingston got them mixed up with one another and she tried to explain that at the end of the meeting but she was not catching on.

Robin Kingston responded the only set of paperwork submitted was after the meeting and the paperwork was placed in the file with a note. There was only one set of paperwork. Copies of the paperwork were given to the Board. This is the only set of paperwork she was given.

Suzanne Ryan responded that Robin must have lost it and I gave her the original. There was a letter from the then Town Manager noting York Road was a road.

Alan Harding commented he did not know what she was talking about.

Suzanne Ryan responded maybe he does not because he prefers not to but at any rate, at the beginning of the meeting passed in paperwork of why I felt they were setting precedence. Does anybody remember that?

Alan Harding suggested she work with Rob Houseman and Robin Kingston to figure it out.

Page 3

4th line from the bottom change "an warranted to unnecessary"

Page 4

Second to the last line add "to"

Page 5

6th paragraph change "there to the"

Page 6

3rd paragraph from the bottom first sentence change "the to he"

It was moved by Steve McGuire to hold approval of the August 1, 2011 minutes until we resolve the hand in incident. Suzanne Ryan seconded the motion. All members voted in favor of the motion and the motion passed.

Other Business

Suzanne Ryan noted the RSA 674.41 application needs to be amended to reflect changes and criteria.

Rob Houseman responded the applicant has been revised and is available at the Town Office and online.

Rules of Procedure

Rob Houseman and Robin Kingston have been asked to include the "Conduct of a Meeting" section of the Rules of Procedure in the application and also to abutters.

This way applicants have a chance before hand to understand how the meeting will work, can be asked if they understand the conduct of then the chairman will not have to read them at each meeting.

Amended Rules of Procedure

Section IV has been amended and this is the first reading. Alan Harding read the change on page 2. All members voted in favor of the change.

Other Business:

Mike Hodder commented specifically regarding on the way the Board handled the hearing of access to the back lot. There is a distressing lack of congeniality shown by some

members of the Board towards staff. Whether Board members feel that staff are or are not doing their jobs, they should not say so publicly during a hearing. If you Steve or Suzanne have a beef with Rob over how he handles the application process for 674.41, please address them privately, not in a public hearing, being recorded, official minutes in front of the public. This just does not look good.

Secondly whether or not an applicant needs to get a building permit and have it declined before he or she comes to the ZBA for relief is essentially irrelevant if you look at the wording as the RSA states specifically, "no building shall be erected upon any lot within any part of the municipality, nor shall a building permit be issued", In other words you are not going to get a building permit even if you want to because the RSA says you cannot, which gives ZBA first instance.

Steve McGuire stated Town Council said this is the requirement and they need to be denied however most towns do not enforce it.

Suzanne Ryan responded that Mike Hodder included her name in berating the Town Planner and she did not.

Steve McGuire asked our Chairman at the first meeting how many land locked parcels there are in town, how many had footpath, easements, already been developed, could be developed, what was the official comment from the Planning Board regarding the development of these lots and what was the conflict or compliment to the Master Plan. That was on July 19th but he has not heard a word. He had a major concern.

Mike Hodder stated he was referring to the comment in which the way the Town Planner altered the way applications for RSA 674.41 need to be addressed.

Steve McGuire responded that in the documentation they were given one says "or" and one says "upon." The RSA says upon the criteria says or.

Mike Hodder stated his point is not whether Steve or Suzanne has a right to say anything about the Planner and his job, in his opinion they do not need make these comments in public.

Suzanne Ryan stated likewise, for what he is doing right now because it is all going in the minutes. He is berating them for the way they behaved and he could have spoken to them outside.

Alan Harding asked about a Notice of Decision on Fairway View Estates and asked where it stands in Court.

Rob Houseman responded as of last week the court granted the motion to dismiss. There is a 30 day appeal window. This was a Summary Judgment. The Notice will be in the next packet and hopefully a final decision.

There being no further business Suzanne Ryan moved to adjourn at 9:30 PM. Alan Harding seconded the motion. All members voted in favor. The motion passed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Robin Kingston', is written over the printed name.

Robin Kingston
Administrative Assistant

attachment

Doherty • 114 Cowper Road • Wolfeboro NH 03894

November 7, 2011

Robert Houseman, Director of Planning & Development
Alan Harding, Chairman
Zoning Board of Adjustment
Town of Wolfeboro
84 South Main St.
P.O. Box 629
Wolfeboro, New Hampshire 03894

Dear Mr. Houseman and Mr. Harding:

This letter regards TM# 59-1, Case # 07-RSA-11, Applicant: Corey A. Eastman II, Appeal of NH RSA 674:41, pending before the Zoning Board of Adjustment at its November 7, 2011 meeting. My apologies for not being present personally; I had intended to be there but an illness over the past several days has unfortunately precluded my attendance.

Along with my brother and sister, I own property on Cowper Road abutting the parcel that is the subject of your appeal hearing. This land has been in our family since the 1930s. This letter represents the views of our family, including my parents, the prior owners of the property.

The applicants are requesting an exemption from the requirements of NH RSA 674:41 which prohibits siting buildings on lots without road frontage. The appeal is based on an argument that enforcement of the provisions of the law would cause an unnecessary hardship.

First, it is worth noting the applicants must certainly have known the requirements of the law in advance of purchasing the 75 acre property in 2010. The area's required 400 feet of road frontage for a dwelling is long-standing and well known. It is hard to understand how the unnecessary hardship case can even be made for something that is understood beforehand and fully expected. Notably, the price paid for the land (approximately \$1,000 per acre) was not at a level consistent with area norms for a developable property.

That said, our deep concern at this time is over the precedent approval of the request would set – and the potential impacts of this one decision and all others that could follow in the future. This is by no means the only parcel of land in the surrounding area that does not abut a road. Approval of this request would ultimately make it very difficult to deny similar requests.

One of the criteria the Zoning Board of Adjustment must use in making its decision is determining that approval of the request would not “increase the difficulty of carrying out the master plan.”

We feel strongly that approving this decision and thereby setting the precedent for other like situations would, in fact, increase the difficulty of achieving specific intentions of the Town’s master plan. A review of the *2007 Town of Wolfeboro Master Plan*, the *2011 Natural Resources Chapter of the Master Plan*, and the Natural Resources Inventory Maps supporting the plan makes this clear. This necessitates first summarizing the resource values of this area as identified in the plan.

The property and surrounding block of forest land are parts of one of the two largest blocks of unfragmented Lands in Wolfeboro, as shown in the Town’s “Unfragmented Lands Map.” This area is listed in the category of unfragmented blocks of 1,000 to 5,000 acres. In the “Wolfeboro Regional Unfragmented Lands Map” this area is listed in the category of unfragmented blocks of 5,000 to 10,000 acres, when counting in land in adjacent towns.

The *2011 Natural Resources Chapter of the Master Plan* clearly emphasizes the value of these lands:

Unfragmented open spaces are large blocks of forest, wetlands, and farmland that remain intact and unfragmented by development such as public roads. These spaces are important for a variety of reasons; they provide essential forest interior habitat for species that need to be distanced from human activity in order to survive, they provide habitat for animals with large home ranges (such as moose), they enable owners of large parcels of forestland to conduct timber harvests that are economically viable, they minimize conflicts surrounding managed forests or farms and development, and they offer recreational opportunities for the town’s residents, such as hiking, snowmobiling, snowshoeing, etc. [p 36-37]

Approximately half the property, including the proposed house site, is valuable forest land, shown on the “Town of Wolfeboro Forest Soils Map” as forest soil class IA or IB, the best soils for forest growth and harvest. As importantly, significant portions of the adjoining properties in this undeveloped block also have this valuable forest resource status. The Master Plan clearly recognizes the importance of forest lands for a variety of economic, natural resources, scenic and recreational purposes. Notably, this parcel and adjoining properties have been actively harvested quite recently, further demonstrating their importance.

While the property and the surrounding area have not been in active agricultural use for many year, it is worth noting that the portion of the property on which the house is proposed is also listed as “prime farmland” in the “Town of Wolfeboro Agricultural Soils Map.”

Portions of the property (but not the proposed house site) and of the larger block of undeveloped land are also shown as wetlands on the Town's "NWI & Prime Wetlands Map" and the "Surface Waters Map". The property drains to an unnamed creek flowing to Wiley Brook and ultimately Wolfeboro Bay. The larger undeveloped forest block flows both to this water body and to the Pine River watershed. These same watercourse areas are listed as "highest ranked habitat in NH" and "highest ranked habitat in biological region" in the "Wildlife Action Plan Ecological Condition Regional Map of Wolfeboro." The rest of the surrounding block of land is listed as "supporting landscape."

In regards to unfragmented lands and wildlife, the *2011 Natural Resources Chapter of the Master Plan* states:

The wildlife community is an exceptionally important resource, but is slowly declining due to human development, which causes habitat loss and fragmentation. As roads, buildings, and other human developments are constructed, habitats are continually broken into fragments causing frequent road crossings, lessening the amount of open habitat and increasing the stress on these animals. [p 43]

Based on the information above, it is clear the property in question and similar parcels not abutting roads in the larger area have value recognized by the Master Plan. But, the Master Plan goes further.

The 2007 Master Plan sets its first land use goal as:

Preserve and protect Wolfeboro's sensitive and critical land and water resources including: surface waters, watersheds, shorelines, wetlands, floodplains, aquifers, agricultural lands, forests, hills and ridgetops, wildlife corridors and habitat, scenic viewsheds, and the night sky. (p 65)

The *2011 Natural Resources Chapter of the Master Plan* states more specifically:

- Continue to use all available tools to protect natural resources, including wetlands, wildlife, agriculture, forests, open space, recreation areas, and view sheds.
- Keep unfragmented parcels unfragmented.
- Do not issue building permits for development on Class VI roads. [note: while a class VI road is not at issue here, this direction goes to the same intent -- keeping unfragmented lands unfragmented.]
- Establish land use regulations that require new development be sited in ways that minimize the impact on open space. (pp 72-75)

Approving the applicant's request would contravene the intent of the Master Plan to retain unfragmented lands, protect forest land, open space and wildlife and "increase the difficulty" of carrying the plan out. It would not only begin the fragmentation by developing a property that has never previously been developed, but over time would lead to many more similar decisions.

From a cursory review of the "Unfragmented Lands Map" it appears there may be 17 parcels that do not abut a road within the large unfragmented block that includes this parcel. These properties easily total many hundreds of acres right through the middle of the block. Approving this application would make it virtually impossible to not do the same for any other applicant in a similar situation.

In discussing challenges faced by the Town, the *2007 Master Plan* states "foremost among the challenges is the lack of adequate planning tools to determine where development should occur and where it should not." (p 62) This is clearly not the case in this situation. The Zoning Board of Adjustment has the tool (NH RSA 674:41) and the planning information (from the Town's own plan) to make the determination. This is not an allowable application under the law.

Thank you for your consideration. Again, I apologize for not attending in person.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan L. Doherty". The signature is fluid and cursive, with the first name being the most prominent.

Jonathan L. Doherty, for the Doherty family:

Anne Doherty
Timothy S. Doherty
Esther F. Doherty
Robert J. Doherty